

Application Serial No.: 10/049,876
Applicant: William F. AFTOORA
Amendment Filed: August 1, 2005
In Response to Office Action mailed on March 30, 2005

III. REMARKS

Claims 1-34 were filed in United States Serial No. 10/049,876 on June 7, 2002. Applicant has amended claim 1 of the present application and, for the reasons set forth below, respectfully requests the issuance of a formal notice of allowability directed to claims 1-32.

35 U.S.C. 112

Claims 16-32 have been rejected under 35 U.S.C. 112, first paragraph. It is specifically alleged that the application does not disclose a food product that is “substantially acid neutralized.”

Applicant respectfully traverses this rejection. The present application provides support for a substantially acid neutralized food product at page 15, lines 12-14 (“The amount of edible bicarbonate to be added to the food product of the present invention should be an amount effective to substantially neutralize the acidity of the solid form food product”). Accordingly, Applicant submits that the subject matter of claim 16 has been described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor, at the time the application as filed, had possession of the claimed invention. Applicant therefore respectfully requests withdrawal of this rejection.

Claims 16-32 have also been rejected under 35 U.S.C. 112, second paragraph. It is specifically alleged that it is not clear what level of pH would be considered “substantially acid neutralized.”

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Applicant also traverses this rejection. The present application specifically teaches that an edible bicarbonate is included in the flavored solid-form food product in order to neutralize the acidity of the food product. Accordingly, a food product is provided having a lower level of acidity which may be ingested by those individuals having low tolerances for high acid-containing foods. Page 15, lines 14-17 of the present application expressly teaches that ". . . the amount of edible bicarbonate to be added to the food product of the present invention should be an amount effective to raise the pH of the food product from about 1 to about 3 pH units." One having ordinary skill in the art, using well known pH measurement techniques (such as those taught in undergraduate chemistry courses), can easily ascertain the pH of a molten mixture of the components of the food product both before and after the addition of the edible bicarbonate. Accordingly, Applicant submits that claims 16-32 particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant therefore respectfully requests withdrawal of this rejection.

35 U.S.C. 102

Claims 1-15 have been rejected under 35 U.S.C. 102(b) as being anticipated by WO 96/29894. It is specifically alleged that WO 96/29894 discloses a sauce base product containing fat, starch, flavor, hydrocolloid, and water.

Applicant respectfully traverses this rejection. Page 6, lines 11-20 of WO 96/29894 expressly discloses that "[I]n the sauce composition, 1-20 wt% of a starch is present which preferably has not considerably gelled. **This means that the starch in the sauce base composition has not been heated to a temperature and for a time sufficient to gel. Some gelling might have taken place during the preparation of the sauce base, upon its pasteurization.** However, if the sauce base product of the invention is subjected to light microscopy analysis, starch particles are shown, which are known to be characteristic of a starch which has not gelled" [Emphasis added].

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Applicant has amended claim 1 to recite that the solid form food product includes (1) an edible fat, (2) a swelled, edible starchy material, (3) a flavor agent, (4) a solidifying agent, and (5) an aqueous liquid. Support for the limitation can be found in the specification at page 17, lines 11-18, disclosing heating the fat and starch at a temperature between 220°F and 225°F (104°C-107°C). Support can also be found in Examples Nos. 1-5, 7 and 8 which discloses that the fat and starch components are combined at heated at 225°F (107°C), a temperature sufficient to melt the fat component and to cause the starch to swell, thereby forming a roux. Thus, the fat and starchy material must be heated together at a high enough temperature to cause the fat component to melt and to cause the starch to swell ("gel"). Starch begins to swell at about 64°C.

WO 96/2984 does not disclose that a roux is formed from a molten mixture of a fat and starch. To the contrary, as stated above, WO 96/29894 discloses that the starch in the sauce base is not gelled. None of the examples of WO 96/29894 are heated to a temperature of 60°C or higher. The reason is that WO 96/29894 expressly teaches not to gel the starch and starch begins to gel at 64°C. As the limitation of a "roux comprising an edible fat and an edible starchy material" is not disclosed by WO 96/29894, claim 1 is not anticipated by this reference. Claims 2-15 ultimately depend from claim 1 and therefore are also not anticipated by WO 96/29894. Applicant respectfully requests withdrawal of this rejection.

35 U.S.C 103

Claims 16-32 have been rejected under 35 U.S.C. 103 as being unpatentable over WO 96/29894 in view of U.S. Pat. No. 6,596,336. It is specifically alleged that WO 96/29894 discloses a food product containing fat, starch, flavor, hydrocolloid, and water. It is also alleged that WO 96/29894 discloses the addition of carbon dioxide to the food product. It is further alleged that U.S. Patent No. 6,596,336 discloses a seasoning mix containing sodium bicarbonate. While the Office Action expressly concedes that WO 96/29894 does not disclose the addition of sodium bicarbonate to the sauce base, it is alleged that sodium bicarbonate is a

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source of carbon dioxide and that it would have been obvious to include the sodium bicarbonate disclosed in U.S Patent No. 6,596,336 in the sauce base of WO 96/29894 as the source of carbon dioxide.

Applicant traverses this rejection. An edible bicarbonate is included in the flavored, solid form food product disclosed in the present application in an effective amount to substantially neutralize the acidity of the food product. By contrast, page 9, lines 1-of 7 WO 96/29894 discloses “[B]y addition of a gas such as air, carbon dioxide, or preferably nitrogen, by methods all well known in the art, the structure of the water containing sauce base can be altered. Without addition, a 15-25 wt % water containing product has a stiff pate-like morphology, whereas the addition of a gas provides a soft, spoonable, mousse-like structure.”

The issue of acid reduction of the sauce base product is not addressed in WO 96/29894. The gas (air, carbon dioxide, or nitrogen) is not added to the sauce base of WO 96/29894 to alter the acidity of the sauce base. To the contrary, the gas is specifically added to the sauce base to alter the physical structure of the sauce base to render it scoopable or spoonable. It is not disclosed that adding carbon dioxide gas to the sauce base product of WO 96/29894 has no effect on the acidity level of the product.

While carbon dioxide may be derived from a reaction involving sodium bicarbonate, there is simply no disclosure, suggestion, or motivation to include an edible bicarbonate in the sauce base of WO 96/29894 for any purpose. There is also no disclosure, suggestion or motivation to add a component to the sauce base product of WO 96/29894 for the purpose of altering the pH of the sauce base. Consequently, the Examiner has arbitrarily selected one particular source of carbon dioxide (sodium bicarbonate) to the exclusion of all others. Applicant therefore respectfully submits that there is no motivation to combine these two references and requests withdrawal of this rejection.

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In view of the amendments and remarks set forth herein, Applicant respectfully requests withdrawal of the rejections under 35 U.S.C. 102, 103, and 112. Applicant also requests the issuance of a formal notice of allowance directed to claims 1-32.

TIMING OF RCE

The PTO mailed an Office Action for the present application on March 30, 2005. The three month shortened statutory period for reply to the March 30, 2005 Office Action was June 30, 2005. Applicants have contemporaneously submitted a petition for a one month extension of time in which to file a response to the March 30, 2005 Office Action, extending the period for response to July 30, 2005. July 30, 2005 was a Saturday and July 31, 2005 was a Sunday, both days in which the PTO was closed for business and does not accept correspondence. The next business day that the PTO was open for business to accept correspondence is August 1, 2005. Therefore, Applicant respectfully submits that the present RCE is timely filed.

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

In the event an additional fee is applicable to the filing of this document and the required fee is not enclosed, or the fee submitted is insufficient, the Director is hereby authorized to charge any fees for Docket No. WFA-1400 which might be required to effect the filing of this (these) document(s) to Account No. 50-3275. This certificate is being submitted in duplicate.

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Should the Examiner have any questions regarding the amendments and/or remarks presented in the present response, Applicant's attorney would welcome a telephone call.

Respectfully submitted,



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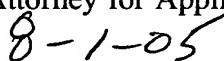
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